

1 CIVIL DISTRICT COURT
2 PARISH OF ORLEANS
3 STATE OF LOUISIANA
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7 GLORIA SCOTT AND *
8 DEANIA JACKSON *
9 * NO. 96-8461
10 VERSUS * DIVISION "I"
11 * SECTION 14
12 THE AMERICAN TOBACCO *
13 COMPANY, INC., ET AL. *
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19 Transcript of proceedings before The
20 Honorable Richard J. Ganucheau, Judge Pro Tempore,
21 Civil District Court, Parish of Orleans, State of
22 Louisiana, 421 Loyola Avenue, New Orleans, Louisiana
23 70112, commencing on June 18, 2001.

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26 * * * * *
27 Thursday Afternoon Session
28 May 8, 2003
29 1:33 p.m.
30 * * * * *
31
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20392

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20395

1 I N D E X
2

3 WITNESS: PAGE
4

5 DAVID E. TOWNSEND, Ph.D. 20397
6

7 CROSS EXAMINATION
8 BY MR. BENCOMO.....20397
9

10 REDIRECT EXAMINATION
11 BY MR. BELASIC.....20405
12

13 ALEXANDER WHITE SPEARS, III
14

15 Videotaped Deposition.....20420
16
17
18
19
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20396

1 P R O C E E D I N G S
2

3 THE BAILIFF:

4 All rise for the jury, please.

5 (Whereupon the jury joins the
proceedings at this time.)

6 THE MINUTE CLERK:

7 All rise, please. Recess is over.

8 Court will come to order. You may be seated.

9 THE COURT:

10 Good afternoon.

11 Mr. Bencomo, are you ready to continue?

12 MR. BENCOMO:

13 Yes, Your Honor. Thank you, Your Honor.
14 Good afternoon, ladies and gentlemen.
15 THE JURY:
16 Good afternoon.
17 MR. BENCOMO:
18 Good afternoon, Your Honor, Dr.
19 Townsend.
20 THE WITNESS:
21 Good afternoon.
22 Carl, would you be kind enough to put up
23 the last document that we had on the screen
24 before we broke for lunch, please?
25 And that is the October 3rd, 1989
26 meeting regarding new tobacco products that
27 we had up on the screen before, Your Honor.
28 May we publish?
29 THE COURT:
30 If it's AZS-000228?
31 MR. BENCOMO:
32 Yes, Your Honor.

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20397

1 THE COURT:
2 You may publish it.
3 MR. BENCOMO:
4 Thank you.
5 And would you please go to the fourth --
6 Page 4. You've got it highlighted already.

CROSS-EXAMINATION

8 BY MR. BENCOMO:
9 Q. Sir, do you disagree with the statement that
10 the "If you can't quit, smoke Merits" campaign
11 implies that low-tar, low-nicotine cigarettes were
12 safer than traditional cigarettes, do you disagree
13 with that statement?
14 "Yes" or "No"?

15 A. Well, I mean, I'm not sure I can answer that
16 "Yes" or "No" because I'm not familiar -- I've never
17 seen a campaign called "If you can't quit, smoke
18 Merits."

19 MR. BENCOMO:

20 Very well.

21 Carl, would you please go to Page 3 of
22 that document. And would you highlight the
23 last paragraph.

24 And would you please publish that for
25 the benefit of the jury.

26 EXAMINATION BY MR. BENCOMO:

27 Q. Dr. Townsend, do you recall that Mr. Belasic
28 asked you a question about that particular paragraph
29 yesterday?

30 A. Yes, I generally remember that.

31 Q. And, as a matter of fact, what you did was to
32 read the first line. But the rest of the paragraph

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20398

1 was not highlighted nor did you read from it or
2 address any issues with the jury.

3 I'm going to ask if you would be kind enough
4 to read that document or that paragraph and ask that
5 the jury do the same before I ask you a question.

6 A. (Witness reviews document.)
7 Q. And the last sentence of that paragraph --
8 And, by the way, the paragraph deals with the
9 Premier cigarette; is that not correct?
10 A. Yes, it does.
11 Q. And it says, does it not, "It is easier to
12 make a case against a product that is obviously
13 being aimed at youth"; is that not correct, sir?
14 A. That's what that last sentence says.
15 Q. And, sir, it is your testimony, as the
16 representative of R. J. Reynolds, that Reynolds does
17 not aim or target children; is that correct, sir?
18 A. That is clearly my testimony.
19 R. J. Reynolds does not target youth, we do
20 not encourage youth to smoke, we don't want youth or
21 underaged people to smoke. We don't want underaged
22 people to smoke because, if they do, it calls into
23 question everything we're trying to do in marketing
24 to adults.
25 Q. Sir, your company does not develop a single
26 drug that saves lives; does it?
27 A. In what sense? You mean in the
28 pharmaceutical industry? We're not a pharmaceutical
29 company.
30 Q. You do not manufacture a single drug that
31 saves lives. You're not a pharmaceutical company;
32 correct?
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20399

1 MR. GAY:
2 Objection. Repetitious.
3 THE COURT:
4 Sustained. Next question, please.
5 EXAMINATION BY MR. BENCOMO:
6 Q. You are aware, are you not, of the CDC
7 statistics that show that 400,000, 400,000 Americans
8 die each year as a result of cigarette smoking; is
9 that not correct, sir?
10 A. I've seen some various statistics. That's
11 one of them.
12 Q. And you've seen statistics, have you not,
13 that the CDC, the Centers for Disease Control,
14 shows, also, that over 10,000 of our citizens here
15 in Louisiana die as the result of smoking products
16 such as yours and those of the defendants'; is that
17 not correct, sir?
18 A. I don't know that.
19 Q. You don't know how many people your company's
20 killed in Louisiana; is that correct?
21 MR. BELASIC:
22 Objection. Argumentative.
23 THE COURT:
24 Sustained. Next question, please.
25 EXAMINATION BY MR. BENCOMO:
26 Q. Sir, did you ever meet my father?
27 MR. WILLIAMS:
28 Objection.
29 MR. GAY:
30 Objection. Relevance.
31 THE COURT:
32 Sustained.
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20400

1 MR. BENCOMO:
2 I don't have any other questions of this
3 witness, Your Honor.
4 THE COURT:
5 Redirect?
6 MR. SHOLES:
7 Your Honor, may we approach?
8 THE COURT:
9 Yes.
10 (Whereupon a bench conference is held at
11 this time as follows:)
12 THE COURT:
13 Mr. Sholes?
14 MR. SHOLES:
15 Your Honor, I'm afraid at this time I
16 must move for a mistrial based upon the fact
17 that Mr. Bencomo has, unfortunately,
18 interjected a personal issue into the case
19 which has given the jury an impression that
20 his father has been afflicted by something
21 related to this case and something that we
22 cannot even question about. The implication
23 alone is something that we cannot deal with.
24 And for that reason, we've been unduly
25 prejudiced and must move for a mistrial.

26 MR. BENCOMO:
27 Your Honor, how can there be any
28 implication of that? If he had said that
29 he had met my father, I had a series of
30 questions to ask him. He said he hadn't,
31 and I shut it down. Where is there some
32 implication? That's just Mr. Sholes' --

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20401

1 THE COURT:
2 Let's read it back.
3 MR. SHOLES:
4 Your Honor, the previous question --
5 THE COURT:
6 Just a moment. Now, Mr Sholes.
7 MR. SHOLES:
8 The previous question implied that
9 someone had died in Louisiana, and then he
10 proceeded to talk about his father. There is
11 absolutely no way that we can correct that.

25 MR. BENCOMO:
26 Right.

27

THE COURT:

28

And then the question was: You don't
29 know how many people your company's products
30 killed in Louisiana?

31

MR. BENCOMO:

32

His answer was --

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20402

1

THE COURT:

2

-- "I don't."

3

MR. BENCOMO:

4

Right.

5

THE COURT:

6

The next question: Did you ever meet my
7 father?

8

MR. BENCOMO:

9

Right.

10

THE COURT:

11

That's the series of questions. And --

12

MR. SHOLES:

13

There is not even a good-faith basis to
14 ask such a question as to whether or not he
15 met his father. The only intent or purpose
16 of it is to send that implication.

17

MR. BENCOMO:

18

Judge, I was going to ask questions
about the product, okay? And there's no
20 reason why I should have been precluded here.

21

THE COURT:

22

What's your justification for
23 interjecting a personal note into it in your
24 questioning? I think that's the gravamen of
25 this objection and motion for a mistrial.

26

MR. BENCOMO:

27

Because there are over a million and a
28 half smokers in this community. And if this
29 gentleman who's a designer and all that
30 can --

31

THE COURT:

32

Did your father, in fact, die of a

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20403

1

smoking-related disease?

2

MR. BENCOMO:

3

No, I'm not saying that he did or he
4 didn't because I didn't go there. You see
5 what I'm saying? I mean, the reason --

6

THE COURT:

7

Well, then what's the reason for the
8 question?

9

MR. BENCOMO:

10

Because I was going to get -- I had a
11 whole other series of questions to ask him,
12 if he had. And I don't know --

13

THE COURT:

14

If he had met your father?

15

MR. BENCOMO:

16

Yes.

17

I mean, I don't know whether he did or
18 he didn't, okay? I have no idea whether he
19 did or didn't. Had he said that he did, all

20 right, then --
21 THE COURT:
22 If he had met your father?
23 MR. BENCOMO:
24 Yes.
25 THE COURT:
26 Why in the world would he have met your
27 father?
28 MR. BENCOMO:
29 Judge, there is a reason why he may have
30 met my father. And I didn't know what the
31 answer would be, okay? I had -- I mean,
32 just --

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20404

1 MR. LONG:
2 I think we need the reason on the record
3 why he thinks he met his father to see if
4 there's a good-faith basis to his question.
5 MR. BENCOMO:
6 No, I didn't think. I didn't think. I
7 asked him a question. When he said that he
8 didn't, I just shut it down. Because the man
9 keeps on going about the fact that he's not
10 aware of the statistics, and I was going to
11 ask him that. I was going to ask him
12 whether --

13 THE COURT:
14 Well, I'm going to take the motion under
15 advisement and think about it. I don't have
16 to grant it or deny it at this point. I'm
17 going to think about it.

18 MR. LONG:
19 And I would request that if Mr. Bencomo
20 had a reasonable basis to believe that this
21 gentleman may have met his father, that he
22 put it on the record.

23 THE COURT:
24 I may request that he do that, but I'm
25 not going to do it at this point.

26 Your motion for mistrial is under
27 advisement.

28 (Whereupon the bench conference is
29 concluded at this time.)

30 THE COURT:
31 Mr. Belasic, do you wish to conduct
32 redirect?

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20405

1 MR. BELASIC:
2 Yes, Your Honor.
3 THE COURT:
4 Proceed.
5 REDIRECT EXAMINATION

6 BY MR. BELASIC:
7 Q. Dr. Townsend, you've been here a long time.
8 I'll try to make this as brief as possible and hit
9 on a few of the issues that plaintiffs' lawyer asked
10 you about.

11 Do you remember the plaintiffs' lawyer asked
12 you a question about whether the Surgeon General

13 actually designed cigarettes?
14 A. Yes, I remember that.
15 Q. The Surgeon General does not actually design
16 cigarettes; correct?
17 A. Not directly, no, of course not.
18 Q. But the Surgeon General does evaluate the
19 design of cigarettes that your company and other
20 companies make; correct?
21 A. The Surgeon General has evaluated cigarette
22 design modifications and some of the changes in
23 cigarettes over the years, he's done that on several
24 occasions.
25 Q. And do you remember the 1979 Surgeon
26 General's chart that we put up for the jury that had
27 all of the pluses when they rated cigarette design?
28 A. Of course, I remember that.
29 Q. Was that an evaluation of your company's and
30 other companies' cigarette designs by the Surgeon
31 General?
32 A. Yes, of course.

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20406

1 Q. And what was the overall evaluation of the
2 effect of the changes in cigarette design that your
3 company has made and the other companies have made?
4 A. The overall evaluation from that chart that
5 the Surgeon General had was that the design
6 variables, the design modifications that we've
7 actually implemented in the marketplace have reduced
8 tar and nicotine yield.

9 And many of those design variables or tools,
10 techniques, have had major reduction effects on tar
11 and nicotine. And, moreover, that with some of
12 those, there's been major reductions in biological
13 activity as well.

14 Q. And didn't the Surgeon General publish an
15 entire one of his reports on the issue of cigarette
16 design?

17 A. He did. It was in 1981. The title of that
18 report was The Changing Cigarette. It focused on
19 cigarette design and what's happened with cigarette
20 modifications over the years. Also, it made
21 recommendations on directions for the future.

22 Q. And did you follow those recommendations of
23 the Surgeon General? Did your company follow those?

24 A. Yes, very definitely.

25 Q. Did the industry, as a whole, follow the
26 recommendations of the Surgeon General on cigarette
27 design?

28 A. Yes.

29 Q. Now, did lawyers, the lawyers Mr. Bencomo
30 talked about, stop you or your company from
31 following on those recommendations?

32 A. Of course not.

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20407

1 Q. Now, you told this jury several times when
2 Mr. Bencomo was asking questions that you personally
3 believe that it is more likely than not that smoking
4 causes lung cancer; is that right?

5 A. I do believe that, yes.

6 Q. Have lawyers tried to interfere with your
7 belief?
8 A. No.
9 Q. Have lawyers told you that you can't say that
10 to these ladies and gentlemen?
11 A. Absolutely not.
12 Q. The plaintiffs' lawyer talked about the
13 former R & D director, Dr. DiMarco. And you told
14 the jury that Dr. DiMarco believed that smoking may,
15 in fact, cause lung cancer.
16 A. That's my interpretation of Dr. DiMarco's
17 beliefs, yes.
18 Q. Did Dr. DiMarco keep his job?
19 A. Actually, he was the head of R & D for much
20 longer than, I think, anybody else that I can
21 remember.
22 Q. Now, has anyone ever told you that your
23 personal belief that it is more likely than not that
24 smoking causes lung cancer somehow interferes with
25 your job or your job performance?
26 A. It does not interfere with my job, my job
27 performance or my ability to do good work at
28 Reynolds.
29 Q. Now, isn't it a fact that on Reynolds'
30 website right now, for the public to see, it says
31 that cigarette smoking may contribute to cause lung
32 cancer and the other diseases that we've talked

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20408

1 about?
2 A. Yes.
3 Q. Now, did lawyers try to stop that website
4 from going up?
5 A. No.
6 In fact, that website language was developed
7 based on scientists at R & D, at Research &
8 Development, looking at all the science and trying
9 to evaluate and come to some consensus of what all
10 that meant. And that is our consensus.
11 We have some people at R & D that believe
12 definitely that cigarette smoking absolutely causes
13 cancer; we have some scientists who believe that,
14 much like me, that we need to know the mechanism,
15 that it probably does or may cause cancer or is more
16 likely than not.
17 There are a variety of different opinions
18 based on the science. But the language on that
19 website is an R & D consensus. And nobody from
20 R. J. Reynolds' management, lawyers or anyone else
21 influenced that language.
22 Q. Now, you've been asked questions about this
23 biological mechanism and some of the statistics, the
24 epidemiology. Is the idea that epidemiology or the
25 statistics alone insufficient to prove causation, is
26 that something that you made up?
27 A. No.
28 In fact, epidemiologists have made that clear
29 over the years. Epidemiology is the statistics of
30 association, looking at certain diseases and trying
31 to decide what lifestyles or exposures may correlate
32 with certain diseases. It was never intended by

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1 epidemiologists to try to establish causation. It's
2 one very important step in the process of causing --
3 of determining causation, however.

4 Q. Has the Surgeon General ever said anything
5 about whether epidemiology or statistics would be
6 enough to make a scientific conclusion about
7 causation?

8 A. The Surgeon General has spoken to that, yes.

9 Q. And what has the Surgeon General said?

10 A. The Surgeon General said that it's generally
11 considered that statistics or epidemiology alone
12 cannot prove causation.

13 Q. And, yet, the Surgeon General has gone on to
14 conclude that smoking causes cancer; correct?

15 A. Yes, he has.

16 Q. And is that a judgment call?

17 A. It is a judgment call. It's less rigorous
18 than most -- than many scientists would look at in
19 deciding causation. It is judgment.

20 Q. Now, you said that you think you need a
21 mechanism to absolutely prove that smoking does
22 cause cancer?

23 A. Yes.

24 Q. If you had a biological mechanism, some
25 explanation of how smoking causes cancer, would that
26 affect your job as a cigarette designer?

27 A. I think it would be a great help to our job
28 in reducing the risks. Because if we know the
29 mechanism, then we know how cigarette smoke can
30 cause cancer and certain other diseases. And if we
31 know how it happens, then we know what to go after
32 to reduce or eliminate in smoke or in other ways

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20410

1 change the cigarette or cigarette smoke to reduce
2 risk.

3 Q. Now, right now, has the public health
4 community that's reached that judgment call on
5 causation, have they given you some sort of formula
6 that would make an absolutely safe cigarette?

7 A. No, they haven't.

8 Q. Have they told you where to go to get one?

9 A. Not really, no.

10 Q. Is that something that you have to find on
11 your own?

12 A. Well, we do.

13 Scientists in my department, at my competitor
14 companies and some scientists at universities
15 actually go out and try to decide, okay, why do we
16 see what we see in the biology and in the
17 epidemiology and other areas? And then tries to
18 define directions to go.

19 But the government has not come to us and
20 said, "Here's the direction you need to take." Or
21 the government has not even been able to say,
22 "Here's how you would evaluate and decide whether a
23 product is safer or not."

24 Q. Now, this morning, when you were asked
25 questions by plaintiffs' lawyer, there was some
26 discussion of this phrase "The poison is in the

27 dose." What did you mean by that?
28 A. Well, I brought that up.
29 "Poison is in the dose," I think I was
30 referring to Dr. DiMarco. That was one of his
31 favorite phrases. "Poison is in the dose" is really
32 the basic tenet of toxicology. And, in fact, it's a
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20411

1 very old phrase.

2 And toxicology is based on the poison is in
3 the dose, which means the higher the exposure or the
4 higher the concentration that's received by a person
5 increases the potential for damage, for risk, for
6 disease, for, you know, for a number of things.

7 It is, in fact, the central core of
8 toxicology. It really means that if something --
9 if exposure can cause risk, then less ought to be
10 better. And less ought to be better is the
11 operating -- is an operating principle that we work
12 on at Reynolds to reducing the levels of various
13 chemical constituents in tar to try to reduce the
14 risks; reducing tar exposure and nicotine exposure
15 to smokers through these general reduction
16 techniques; by reducing the tar exposure to smokers
17 through the Russell approach, that is, maintaining a
18 medium nicotine level and trying to reduce the tar
19 level as much as possible; and by developing Premier
20 and Eclipse to reduce the overall exposure.

21 Less ought to be better is one of our most
22 important operating principles.

23 Q. Let's talk about one of the studies that
24 plaintiffs' lawyers showed you about the effect of
25 reducing tar and nicotine.

26 MR. BELASIC:

27 And if we could call up Exhibit 0606.02.
28 Your Honor, it's been admitted. May we
29 publish the first page?

30 THE COURT:

31 You may publish it.

32 EXAMINATION BY MR. BELASIC:

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20412

1 Q. Dr. Townsend, you see that this is the
2 National Cancer Institute monograph that you were
3 questioned about today?

4 A. That's what this chart shows. Or says.

5 Q. All right. And do you remember that the
6 plaintiffs' lawyers showed you one of the
7 conclusions from one of the chapters?

8 A. Yes, I remember that.

9 Q. Do you remember that he said that it proved
10 that low-tar cigarettes didn't reduce risk?

11 A. Yes.

12 Q. And do you remember what you told him was the
13 reason you disagreed with that conclusion in that
14 particular chapter?

15 A. I remember.

16 Q. Why?

17 A. The conclusion is wrong because even within
18 Monograph 13 in Chapter 4, the Chapter 4
19 "CONCLUSIONS," the conclusions are that the

20 epidemiology for low-tar cigarettes shows less risk
21 for smokers for lung cancer, not for certain other
22 diseases but for lung cancer, there is a risk
23 reduction moving to lower tar.

24 The conclusion, the overall conclusion in the
25 report was there's no benefit for lowering tar. But
26 the epidemiology is there for lung cancer, maybe not
27 for certain other diseases. And if the epidemiology
28 shows reduced risk, then that's what it is. There
29 is reduced risk for smokers of lower tar cigarettes.

30 Q. Now, when you responded to plaintiffs' lawyer
31 this morning, did you specifically mention that
32 Chapter 4 had those conclusions?

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20413

A. Yes.

Q. And did plaintiffs' lawyer show the jury what
Chapter 4 of this document concluded?

A. No.

Q. Well, let's look at it now.

MR. BELASIC:

Your Honor, may we publish Page 146?

THE COURT:

You may publish it.

MR. BELASIC:

And may I hand the witness a hard copy?

THE COURT:

Yes.

EXAMINATION BY MR. BELASIC:

Q. Dr. Townsend, is this a full version of
Monograph 13?

A. Yes, it is.

Q. Can you confirm for us that Page 146 is, in
fact, the "CONCLUSIONS" of Chapter 4 that you told
plaintiffs' lawyer about?

A. Yes, it is.

MR. BELASIC:

Could we highlight Conclusion Number 5?

And blow it up, please, Bert?

EXAMINATION BY MR. BELASIC:

Q. And, Dr. Townsend, could you read that
conclusion for us here today?

A. Sure.

Number 5, "Epidemiological studies have not
consistently found lesser risk of diseases, other
than lung cancer, among smokers of reduced yield
cigarettes. Some studies have found lesser risks

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20414

1 of lung cancer among smokers of reduced yield
2 cigarettes. Some or all of this reduction in lung
3 cancer risk may reflect differing characteristics of
4 smokers of reduced-yield compared to higher-yield
5 cigarettes."

Q. Now, Chapter 4 is a pretty long chapter in
that book; isn't it?

A. Yes.

Q. And doesn't Chapter 4 review the scientific
studies where they measured the cancer death rate of
people who smoked these low-tar cigarettes?

A. It reviews the epidemiology of smokers of

13 high-tar and low-tar cigarettes.
14 Q. And, in fact, isn't there a chart of
15 virtually every such study that's been done that's
16 contained in Chapter 4?
17 A. There is.

18 And virtually every one of those studies
19 shows a reduction in risk for smokers of low-tar
20 cigarettes.

21 Q. And that's not the chapter that plaintiffs'
22 lawyer asked you about?
23 A. That's correct.

24 MR. BELASIC:
25 We can take that down, Bert.
26 Could you put up AZS-000228, which we
27 just had on the screen a few minutes ago?
28 Your Honor, may we publish the first
29 page?
30 THE COURT:
31 You may publish it.

32 EXAMINATION BY MR. BELASIC:
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20415

1 Q. Dr. Townsend, do you remember that you were
2 just being asked questions about this document by
3 plaintiffs' lawyer?
4 A. Yes.

5 Q. And this is the government meeting at the
6 Office of Smoking and Health on various alternative
7 cigarette designs?
8 A. Yes.

9 Q. And one of the cigarette designs that they
10 discussed there was Premier --
11 A. That's correct.
12 Q. -- is that correct?

13 Now, Monograph 13, that scientific study, it
14 did not measure the effect of Premier on cancer
15 risk; did it?
16 A. No.

17 Q. This document does talk about the
18 government's view of what effect Premier had on
19 cancer risk; correct?
20 A. This document does talk about the
21 participants who were representing various
22 government agencies about the relative risks of
23 Premier.

24 Q. And doesn't this document say that the
25 participants commented that Premier appeared to
26 significantly reduce the risk of lung cancer?
27 A. They did.
28 Q. Now, did the government go out and print up a
29 monograph extolling the virtues of Premier?
30 A. No, of course not.
31 Q. Well, in fact, doesn't this very document say
32 that what the government was trying to do was

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20416

1 preparing to ban the cigarette?
2 A. This document does say that.
3 Q. And was there a lawyer present at that
4 meeting, that same Judith Wilkenfeld that Mr.
5 Bencomo was asking you about?

6 A. Judy Wilkenfeld is a lawyer, she was present
7 at that meeting.

8 Q. Now, I've asked you about the government
9 lawyers. Were there any tobacco lawyers either at
10 your firm -- I mean, at your company or at other
11 firms that tried to ban Premier?

12 A. No.

13 Q. Just the government; right?

14 A. The government and public health officials.

15 MR. BELASIC:

16 You can take that down, Bert. Thank you
17 very much.

18 EXAMINATION BY MR. BELASIC:

19 Q. One of the first things that the plaintiffs'
20 lawyer asked you about was that you left a summer
21 job off your resume'.

22 Do you remember that?

23 A. Yes.

24 Q. How long ago was that summer job?

25 A. Oh, gee, I would say '68, '69, thereabouts.

26 Q. So -- what? -- 34, 35 years ago?

27 A. A long time.

28 Q. And plaintiffs' lawyer brought out your age,
29 so I won't be afraid to say it. You're a
30 55-year-old senior executive at a big company;
31 correct?

32 A. That's right.

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20417

1 Q. And does the fact that you left a summer job
2 35 years ago off your current resume' have anything
3 to do with your testimony to these ladies and
4 gentlemen?

5 A. Absolutely not.

6 Q. What was the summer job you had before the
7 one plaintiffs' lawyer asked you about?

8 A. I was a construction -- I'm sorry, I was a
9 carpenter's assistant. And we were building a
10 hospital in Chapel Hill, North Carolina.

11 Q. Did you put that on your resume'?

12 A. No, of course not.

13 Q. Now, plaintiffs' lawyer asked you about why
14 your testimony was consistent from case to case.

15 Do you remember that?

16 A. Yes.

17 Q. Is it true, is what you tell juries
18 consistent from trial to trial?

19 A. Well, it is consistent. And I think one of
20 the key reasons that the testimony is so much the
21 same or so similar is because the issues that come
22 up in various trials are the same, whether it's, you
23 know, added ammonia or the involvement of lawyers or
24 whatever.

25 They're all the same issues and so the same
26 issues come up, the testimony is pretty much the
27 same. And it turns out that plaintiffs' attorneys
28 and defense attorneys also ask me pretty much the
29 same questions.

30 Q. Okay.

31 A. And the other thing is it sounds the same
32 because, really, the facts don't change.

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1 Q. Well, do you work from a script?
2 A. No, I don't.
3 Q. Do you need a script to tell these ladies and
4 gentlemen what R. J. Reynolds has done in the areas
5 of cigarette design?
6 A. No, I don't.
7 Q. Do you need a script to tell these ladies and
8 gentlemen what the science behind your decisions for
9 cigarette design have been?
10 A. Of course not.
11 Q. Now, do the facts change depending on what
12 plaintiffs' lawyers or what plaintiffs decide to sue
13 your company?
14 A. Not usually. No, the facts don't change.
15 Q. Does the science behind the cigarette designs
16 that you talk about, does that change because you're
17 in a different courtroom or you have different
18 lawyers?
19 A. The science doesn't change, what Reynolds has
20 actually done doesn't change, what my competitors
21 have done doesn't change. It doesn't change.
22 Q. The facts are the facts; aren't they?
23 A. Yes.
24 Q. And the truth is still the truth; right?
25 A. The truth stays the same.
26 Q. And have you told these ladies and gentlemen
27 of the jury the truth this week?
28 A. Yes, I have.
29 MR. BELASIC:
30 Thank you for coming. And I don't have
31 any other questions.
32 THE WITNESS:

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20419

1 Thank you.
2 THE COURT:
3 You may step down.
4 THE WITNESS:
5 Thank you, Your Honor.
6 The next witness for the defense?
7 MR. COPLEY:
8 Yes, Your Honor.
9 Good afternoon, ladies and gentlemen.
10 THE JURY:
11 Good afternoon.
12 MR. COPLEY:
13 We're going to show you a video
14 deposition this afternoon. And I promise it
15 won't be as long as it was last Friday, I
16 promise that.
17 This afternoon we'll show you the
18 deposition of Dr. Alexander Spears. Dr.
19 Spears started as a research chemist with
20 Lorillard Tobacco Company and finished up as
21 Chairman of the Board when he retired.
22 As Dr. Townsend told you yesterday, Dr.
23 Spears died a couple of years ago, so we have
24 to watch him via videotaped deposition.
25 We saw some of Dr. Spears' deposition
26 during plaintiffs' case, so you may remember

27 him.

28 The depositions that you will hear from
29 are one taken in this case on November 17th,
30 2000; one taken in a case called Blue Cross/
31 Blue Shield, March 23rd, 2000; and one taken
32 in the State of Texas case on July 24th,

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20420

1 1997. They're all put together. It's about
2 an hour and a half.

3 THE COURT:

4 Proceed.

5 (Whereupon the above-referenced
6 videotape is played back at this time as
7 follows:)

8 QUESTION: Would you please state your
9 name for the jury, please?

10 ANSWER: Alexander White Spears, III.

11 QUESTION: Okay. And you are a Ph.D.;
12 correct?

13 ANSWER: That is correct.

14 QUESTION: All right. I will refer to
15 you as Dr. Spears then throughout this
16 deposition.

17 Dr. Spears, let me start off by asking
18 you what is your present title or position
19 with Lorillard Tobacco Company?

20 ANSWER: My position is Chairman of the
21 Board.

22 QUESTION: What was your salary for the
23 year 1999?

24 ANSWER: Approximately 700,000 dollars.

25 QUESTION: And would it be fair to say
26 that your compensation for the year 2000,
27 your salary for the year 2000 is also 700,000
28 dollars?

29 ANSWER: That's correct.

30 QUESTION: Would you consider yourself
31 an expert in oncology?

32 ANSWER: I wouldn't consider myself an
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20421

1 expert, but I consider myself knowledgeable.

2 QUESTION: Knowledgeable about oncology?

3 ANSWER: Yes, depending on specifically
4 what you mean. Oncology is a very large
5 subject.

6 QUESTION: Have you ever taught any
7 classes on oncology?

8 ANSWER: No.

9 QUESTION: Do you have a degree in
10 oncology?

11 ANSWER: No.

12 QUESTION: Within the past ten years,
13 have you conducted any cancer research?

14 ANSWER: No.

15 QUESTION: So would it be fair to say
16 that since the sixties or seventies, you have
17 not acted as a peer reviewer for a peer-
18 reviewed journal?

19 ANSWER: That's correct.

20 QUESTION: Within the past ten years,
21 have you personally conducted any research
22 using spectroscopy or chromatography to
23 determine DNA or cell mutation by virtue of
24 exposures to chemical compounds?

25 ANSWER: No, I have not worked in the
26 laboratory in the last ten years.

27 QUESTION: You testified on your C.V.
28 indicates that you published a number of
29 articles -- and it's on Page 6 of your C.V.
30 -- you published a number of articles while
31 you were employed by Lorillard Tobacco
32 Company?

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20422

1 ANSWER: That's correct.

2 QUESTION: Do you need to seek prior
3 approval of your superiors in order to
4 publish these articles?

5 ANSWER: I did when I first joined
6 Lorillard in that I reported to someone in
7 the research organization. And they would
8 review articles, certainly comment, and
9 indicate whether they thought they were
10 publishable articles.

11 QUESTION: Did you ever submit an
12 article for review to your superiors at
13 Lorillard that was recommended that you not
14 publish them?

15 ANSWER: No.

16 QUESTION: Would it be fair to say that
17 every article that you wanted to publish
18 while you were employed by Lorillard Tobacco
19 Company was, in fact, published?

20 ANSWER: That's correct.

21 QUESTION: Would you consider yourself,
22 Dr. Spears, to be an expert in addiction?

23 ANSWER: No, I am not an expert in
24 addiction. I think I'm knowledgeable.

25 QUESTION: Have you ever conducted
26 research into the efficacy of nicotine
27 patches or gum?

28 ANSWER: No, I have not.

29 QUESTION: Have you ever conducted
30 research exploring the addictive properties
31 of nicotine?

32 ANSWER: No, I have not.

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20423

1 QUESTION: Let's mark for the record
2 "Spears Exhibit 4."

3 Dr. Spears, have you seen this document
4 before?

5 ANSWER: I don't think so.

6 QUESTION: If you turn to the last page,
7 Page 4 of the document --

8 ANSWER: Yes.

9 QUESTION: -- it indicates in the bottom
10 Arthur J. Stevens.

11 ANSWER: Yes.

12 QUESTION: Who is Arthur J. Stevens?

ANSWER: He was a former Vice-President and General Counsel for Lorillard.

QUESTION: And the first page indicates "American and other companies dismayed at direction of CTR research."

Do you know if in -- on or about or in and around March 1978 Lorillard was dismayed at the direction of CTR research?

ANSWER: I remember from time to time discussions of CTR and CTR's research.

QUESTION: Do you recall in or around the 1978 time frame Lorillard being dismayed at the direction of CTR research?

ANSWER: I think from time to time Lorillard was critical in the sense of whether there ought to be additional research and other types of research, contract versus grant activities.

I don't remember the specific time periods. But from time to time, we had --

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20424

questions were raised, yes.

QUESTION: Isn't it true that some of the questions that Lorillard raised with respect to CTR research was criticism that CTR researchers were determining causation between smoking and various forms of cancer?

ANSWER: That statement is here in the first paragraph, but I don't recall that being a Lorillard position.

QUESTION: From 1990 to 1999, you were on the Executive Board of CTR; is that correct?

ANSWER: From what period again?

QUESTION: From 1990 to 1999.

ANSWER: Yes, I was on the Board of Directors.

QUESTION: It indicates on Page 2 of your expert report that you served as an advisor to the National Cancer Institute from 1968 to the late 1970s?

ANSWER: That is correct.

ANSWER: That is correct.

QUESTION: Was that -- When you were serving in your capacity as an advisor, was that in connection with the National Cancer Institute's Tobacco Working Group?

ANSWER: That is correct.

QUESTION: Would it be fair to say that you acted as an advisor to the Tobacco Working Group from its inception to its termination?

ANSWER: Yes. I think I missed one meeting, which was the very first meeting.

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20425

QUESTION: And what is your expert opinion about the work that was conducted by the Tobacco Working Group?

ANSWER: The quality of the work, the conclusions and -- conclusions of the work

and, I guess, significance of the work.

QUESTION: What is your opinion regarding the quality of the work?

ANSWER: I think it was work of high quality. State-of-the-art scientific investigations at the time, however, used a bioassay for tumorigenesis that has been criticized as probably not relevant to man. It is, however, the only bioassay that was available.

I have opinions on their attempts to develop other bioassays and the results. These are particularly inhalation bioassays. As I say, I have conclusions, overall conclusions of the work.

QUESTION: What is your opinions about the animal inhalation bioassays that the Tobacco Working -- relating to the Tobacco Working Group?

ANSWER: That they all failed to produce all the efforts, which were very high-quality efforts, failed to produce tumors in the lungs of animals that could be used for bioassay purposes of a tumorigenic response. This was true -- It's true of dogs that were attempted, it's true of rats, the two animal models that were explored.

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20426

QUESTION: Do you know that there are scientific literature that's been published that has been demonstrated that, by use of animal inhalation studies, that smoking does lead to tumorigenesis?

ANSWER: If you're talking about the Witschi work and the A/J mouse, I'm aware of that, yes. I would question your conclusion, though.

QUESTION: How would you question my conclusion?

ANSWER: These animals are animals that develop spontaneous tumors of the respiratory tract, I think virtually a hundred percent tumors in their lifetime, which is relatively short.

And what we're talking about in the Witschi papers is some demonstration of perhaps more tumors at an earlier point in time in these animals, but not animals that don't get tumors versus responding to tobacco smoke.

QUESTION: Are you aware of any other scientific literature or studies that has demonstrated that animals subjected to tobacco smoke in animal inhalation studies lead to tumorigenesis?

ANSWER: I'm aware of other studies that asserted that. I'm also aware that the attempts to repeat those studies with state-of-the-art methodology could not duplicate the results.

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20427

ANSWER: Well, there were some experiments years ago where some investigators put animals in a chamber and just blew smoke into the chamber and reported that they had produced some tumors. This was before we could obtain specific pathogen-free animals, animals free of viruses for studies.

22 ANSWER: Yes.

ANSWER: Lorillard has not conducted any studies where we had a tumor as an endpoint, did not produce any tumors in the animals that I'm aware of that could be associated with exposure.

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20428

ANSWER: Generally, endpoints were hyperplasia, metaplasia, some infiltration of macrophages -- a recruitment of macrophages perhaps would be a better way to state it -- into the lower respiratory tract.

18 We have looked at the various endpoints
19 and -- but the general pathology that you
20 would normally look at.

QUESTION: During the course of your, Lorillard's, animal inhalation studies, has Lorillard ever determined that animals subjected to tobacco smoke in animal inhalation studies contract hyperplasia?

ANSWER: Yes, we can see hyperplasia as

27 a response.
28 QUESTION: Metaplasia?
29 ANSWER: We've seen some metaplasia.
30 And, also, the reversal of these if you let
31 the animals recover from exposure.
32 QUESTION: Microphages (sic)?
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ANSWER: $U = T + \frac{1}{2}mv^2$ and $h = \frac{1}{2}mv^2$

20429

1 ANSWER: Yes, I mentioned that.

2 Macrophage.

QUESTION: Meus amigos,

18 So we use 90-day exposures, and which is
19 kind of the typical toxicological time
20 period.

QUESTION: Do you believe that 90-day exposures is a long-term experiment?

28 MR. ALLINDER: With smoke? With smoke?

30 ANSWER: Only through our sponsorship of
31 CTR.

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20430

1 management of the Tobacco Working Group
2 received warnings from members of Congress
3 regarding the exact nature of their research
4 and the appropriations that the Tobacco
5 Working Group and National Cancer Institute
6 would receive if those findings were adverse
7 to tobacco company interests?

ANSWER: I've never heard that.

QUESTION: You don't know one way or the other?

11 ANSWER: I've never heard it.

25 And I believe that corresponded with a
26 change in the philosophy of the Cancer
27 Institute given as the reason for terminating
28 the activities. And that was that the
29 National Cancer Institute should not be
30 working on a safer cigarette, as it was
31 described, and they should adopt the position
32 that people should not smoke.

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20431

QUESTION: Isn't it true that Lorillard did not share the results of its animal skin-painting experiments with the Tobacco Working Group?

32 So there was nothing other than this

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20432

fractionation work that we did not share.
And, as I say, it's not relevant, it wasn't
relevant.

QUESTION: You testified earlier that your opinion is that the research that was conducted by the Tobacco Working Group was significant and of high quality; is that correct?

ANSWER: That's correct.

ANSWER: That's correct.
10 QUESTION: Do you have any other opinion
11 regarding the work that was conducted by the
12 Tobacco Working Group?

ANSWER: Well, I have an opinion
regarding the animal inhalation work in terms
of attempts to develop a bioassay, in terms
of the quality of that work, the results of
that work. I have opinions on the data that
was collected on cigarette variants that were
studied by the group.

20 And this was -- Much of the approach was
21 to create variations in the tobacco product
22 and then determine whether or not there was a
23 change in the response on mouse skin.

ANSWER: Well, that's the only in terms
of the final conclusions, which it didn't
seem practical to, from anything that had
been done, to advance the commercial products
beyond that which had already taken place;
that is to say, the directions that came out

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20433

1 of the Tobacco Working Group were consistent
2 with directions that had already been taken
3 by Lorillard.

ANSWER: They related to the use of reconstituted sheet and the fact that it produced a lesser response on mouse skin, that is, condensate from that; they related to the use of expanded tobacco, which also produced a lesser response on skin of the animals.

20434

1 toxicological studies to determine whether
2 any compound in tobacco smoke is
3 carcinogenic?

6 of testing any additives that we employ to
7 tobacco to determine whether or not they, in
8 the smoke media, produce any change in
9 response in the animals.

10 This was -- This is both with respect to
11 mouse skin and with respect to the inhalation
12 assay that I mentioned earlier and, also, a
13 number of in vitro assays.

14 QUESTION: You refer to in vitro assays.
15 Can you describe for the record what an
16 in vitro assay is?

17 ANSWER: Generally, in vitro is
18 something that's done outside of the whole
19 animal. It uses animal parts or cells, not
20 necessarily just animal parts but living
21 components and/or cells. And we carry out
22 tests at that level without the intact
23 organism.

24 QUESTION: Has Lorillard Tobacco Company
25 ever conducted in vitro assays of human cells
26 to determine the carcinogenic nature of any
27 compound or particulate in tobacco smoke?

28 ANSWER: No. Most of the human cells
29 are in tissue cultures. And I think it's
30 been our general opinion that these are not
31 very reproducible. And there's not a
32 standard test using tissue culture.

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20435

1 I can't fully remember whether we
2 experimented with HeLa cells, which are a
3 human cell lung. I just don't remember.
4 It's possible.

5 QUESTION: So would it be fair to say
6 that Lorillard did not conduct in-house its
7 own skin-painting experiments in the 1960s?

8 ANSWER: We did not house animals for
9 that purpose.

10 QUESTION: Does Lorillard continue to
11 conduct skin-painting experiments today?

12 ANSWER: We do conduct them today.

13 QUESTION: Do you conduct them in-house
14 today?

15 ANSWER: No, they are conducted at
16 consulting laboratories.

17 QUESTION: Has Lorillard ever conducted
18 skin-painting experiments in-house?

19 ANSWER: No, we have not.

20 QUESTION: When was the first time that
21 Lorillard Tobacco Company used animal
22 inhalation studies?

23 ANSWER: Well, we started -- we started
24 some animal inhalation studies back in the
25 early 1960s that related to work that we did
26 on ciliostasis.

27 QUESTION: What is ciliostasis?

28 ANSWER: Cilia are cells that have a
29 structure called the cilium, which is a
30 protrusion, a hair-like structure. These
31 cells line the upper respiratory tract, the
32 trachea, major bronchi.

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(504) 525-1753

20436

20 We can further demonstrate that the
21 materials that cause that effect in the
22 animals are absorbed in the oral cavity of
23 man. And other investigators have published
24 indicating there isn't a significant
25 ciliostatic effect in the average smoker.

QUESTION: When was the first time that Lorillard determined that you could determine in animal studies the ciliostatic effect of smoking?

QUESTION: And is that when the company
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20437

1 first determined that you could demonstrate
2 ciliostatic effect in animal studies?

18 And I refer you to the first full
19 paragraph where you -- where it states, "I
20 may testify about research Lorillard has
21 sponsored or conducted in-house on smoking
22 and health issues, including research
23 relating to the chemical composition of
24 cigarette smoke."

25 Do you have an expert opinion of the
26 research that Lorillard has sponsored or

27 conducted in-house on smoking and health
28 issues, including research relating to the
29 chemical composition of tobacco smoke?
30 ANSWER: Yes, I have an opinion.
31 I mean, it was high-quality research
32 that was conducted over time of a program
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20438

1 trying to identify components of tobacco
2 smoke, particularly those that might have
3 a biological activity, that is, a -- cause
4 a response in a bioassay system.
5 And this ranges from the early work on
6 benzo[a]pyrene. And then we had studies
7 developing methods for the determination of
8 phenols, which at the time were thought to be
9 promoters in the mouse skin, promoters of
10 carcinogenesis, and also were thought to have
11 some role in ciliostasis in these bioassays
12 that we were using.

13 We went on to look and identify many
14 compounds that were in some of these
15 fractions that we generated that were painted
16 on mouse skin and published the results in
17 terms of what we were identifying.

18 And that led to some of the mouse
19 skin-painting experiments that I've already
20 described where we were testing some mixtures
21 of compounds that we found to be present in
22 tobacco smoke. That would be, I think, the
23 nature of the testimony.

24 QUESTION: Has Lorillard ever published
25 any article or written statement to the
26 public that any particular compound in
27 tobacco smoke is known to be an animal
28 carcinogen?

29 ANSWER: Specifically stating that this
30 compound is in tobacco smoke and is an animal
31 carcinogen?

32 QUESTION: Correct.

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20439

1 ANSWER: I don't think so.
2 QUESTION: Are you aware that over the
3 course of the same period of time, from the
4 early sixties to the present, that there
5 exists scientific literature which have
6 concluded that particular compounds in
7 tobacco smoke are known to be animal
8 carcinogens?

9 ANSWER: Yes.

10 QUESTION: Can you identify for me,
11 other than the skin-painting experiments or
12 the animal inhalation studies, can you
13 identify for me any bioassays that Lorillard
14 has used to determine the carcinogenicity of
15 any chemical compound used in tobacco smoke?

16 ANSWER: We have used -- and I think
17 continue to use most of these -- but we have
18 a program of evaluating additives, potential
19 additives to tobacco. And we start out with

20 a series of short-term tests. And among
21 those are the Ames mutagenic tests.

22 There are tests to determine whether or
23 not you can affect the immunocompetence of
24 the test system by a specific component that
25 you're testing or ingredient that you're
26 testing. There are tests that try to
27 determine whether or not there is any
28 cardiovascular effects.

29 Actually, I think there are additional
30 mutagenic tests, including the sister
31 chromatid exchange is another that we have
32 used and I think we may still use.

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20440

1 And then we get to the longer term.
2 There is a longer term inhalation study and
3 the mouse skin studies which we thought to
4 be -- And I'm sure I'm not covering all of
5 the individual tests that we have used or
6 continue to use in this evaluation scheme,
7 but those are the ones that occur to me at
8 the moment.

9 QUESTION: And have you used these
10 tests, the ones you just noted, to determine
11 whether or not any particulate in tobacco
12 smoke or any compound, chemical compound, in
13 tobacco smoke is or is not carcinogenic?

14 ANSWER: I don't recall that, but that's
15 not the basic purpose of the test. It's to
16 determine whether or not a potential additive
17 to tobacco is suitable, from our point of
18 view, with respect to its toxicology.

19 QUESTION: Other than the experiments
20 that you just -- the types of experiments
21 that you just noted and the skin-painting
22 experiments and the animal inhalation
23 studies, can you think of any other type of
24 experiment that Lorillard employs or has
25 employed in its research activities?

26 ANSWER: No, I think that that covers
27 everything that occurs to me now.

28 QUESTION: Do you have an expert opinion
29 regarding Lorillard's efforts to modify its
30 products over the years?

31 ANSWER: Yes.

32 I know what modifications have occurred

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20441

1 and I know, you know, what generally the
2 scientific community -- there was knowledge
3 in this area was suggesting with respect to
4 product modifications over time, and
5 basically what Lorillard did in some of its
6 research activities in response to those kind
7 of opinions and communications in the
8 scientific community.

9 QUESTION: And what is your opinions
10 with respect to that?

11 ANSWER: Well, on some of it, I've
12 already talked about. But in response to the

13 skin-painting activity in the early 1960s,
14 particularly with Dr. Wynder's laboratory and
15 then some of the confirmation in Homberger's
16 laboratory, we adopted the use of
17 reconstituted sheet which had a lower
18 response -- the condensate from which had a
19 lower response on mouse skin.

20 Also, in the early 1970s we started to
21 include expanded tobacco into our products.
22 And this, too, shows a lower response on
23 mouse skin condensate from it.

24 This was all confirmed, again, to us
25 with the Tobacco Working Group activities
26 where they conducted mouse skin-painting
27 experiments on these same -- same materials.

28 Over time, there was a feeling that if
29 you could increase the porosity of paper and
30 this sort of thing, that this would reduce,
31 possibly reduce activity on mouse skin.

32 But, more importantly, it became a

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20442

1 technique of general reduction in terms of
2 tar and nicotine. And we've adopted more
3 porous papers and more efficient filters,
4 including ventilation which allowed you to
5 reduce paper-based components that are not
6 reduced by conventional type of filters
7 without ventilation.

8 Again, all of these areas have been
9 researched and adopted into most of our
10 brands. And as I indicated, much of this is
11 consistent with the direction that came out
12 of the Tobacco Working Group activity and the
13 direction that was being promoted by Dr. Gori
14 at the time.

15 Also, in that same time frame there were
16 suggestions that people smoked for nicotine;
17 and, therefore, if you could maintain the
18 level of nicotine and reduce tar selectively,
19 tar being the other components and thought to
20 be those that produced the response on mouse
21 skin, that this would be a, quote, safer
22 cigarette.

23 We conducted a research program that was
24 aimed at the possibility of trying to do
25 that. That same proposition was advanced by
26 some folks in the U. K. as well in that same
27 time frame. It was kind of a group of public
28 health-related people were kind of advocating
29 that as a possibility of making a safer
30 cigarette.

31 I would describe these things in terms
32 of my opinion on this.

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20443

1 (Whereupon the playback of the above-
2 referenced videotape is suspended at this
3 time.)

4 MR. COPLEY:

5 Your Honor, it's time for the break.

6 THE COURT:
7 Yes. We'll take our mid afternoon
8 recess until 3:00 o'clock.
9 (Whereupon the jury is excused at this
10 time.)
11 THE COURT:
12 Let the record reflect the jury has left
13 the courtroom.
14 Anything for the record by plaintiffs'
15 counsel?
16 MR. MURRAY:
17 Yes, Your Honor.
18 Your Honor, The Court has under
19 advisement a motion for a mistrial. I would
20 appreciate it if The Court would allow me to
21 make some comments on that motion.
22 I don't know whether The Court
23 preference would be to do that now or at some
24 other time. But before you rule, I'd like to
25 be heard on it.
26 THE COURT:
27 I intend to order sometime today -- and
28 this is as good a time as any -- a briefing
29 and indicate that a hearing will occur on
30 Monday of next week.
31 MR. MURRAY:
32 Thank you, Your Honor.

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1 THE COURT:
2 Is my impression correct that we will
3 not have live testimony on Monday of next
4 week but we'll do depositions or documents?
5 Or has that been resolved?
6 MR. SCHNEIDER:
7 I was going to put that on the record,
8 Your Honor.
9 My understanding of our arrangements
10 with the plaintiffs is that I will start Dr.
11 Blackie at 1:30 on Monday. And then that way
12 both sides working together can make a
13 good-faith effort and use all efforts to get
14 her done so that she can leave by the close
15 of court session on Wednesday.
16 THE COURT:
17 All right. Well, I'm going to order
18 that -- request that briefs be filed in
19 support of the motion and in opposition of
20 the motion and certainly no later than 9:00,
21 9:30 Monday morning. But any earlier than
22 that would give me more time to look at them.
23 And I'll conduct a hearing.
24 MR. MURRAY:
25 Your Honor, do you want those filed
26 simultaneously?
27 THE COURT:
28 Yes. There will be no reply briefs.
29 MR. MURRAY:
30 Thank you.
31 THE COURT:
32 So let's set 9:30 Monday morning as the
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1 filing time for the memorandums in support of
2 and the memorandums in opposition to the
3 mistrial.

4 MR. MURRAY:

5 Thank you.

6 MR. SCHNEIDER:

7 Your Honor, we also wanted to run some
8 depositions on Monday morning, including a
9 12-minute spot from a B & W witness, Phil
10 Fisher.

11 I've given a copy of the CD to Ms. DeSue
12 to give to the Gertlers. The Gertler family
13 may be on their way to Syracuse to celebrate
14 their son's graduation.

15 MS. DeSUE:

16 They are.

17 MR. SCHNEIDER:

18 But they've seen this and they're aware
19 of it.

20 MS. DeSUE:

21 Well, they haven't had an opportunity to
22 review it, though.

23 MR. SCHNEIDER:

24 Okay. Well, it's 12 minutes, so I think
25 they'll be able to do that.

26 MR. MURRAY:

27 We'll do our best to have that --

28 MS. DeSUE:

29 Maybe if you could show it a little
30 later. They're going to have to view it that
31 morning.

32 MR. GAY:

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20446

1 We have some other depositions that we
2 could play Monday morning, Your Honor --

3 MS. DeSUE:

4 That would be helpful. Thank you.

5 MR. GAY:

6 -- as well.

7 MR. SCHNEIDER:

8 Okay.

9 THE COURT:

10 Anything else for the record by
11 plaintiffs' counsel?

12 MR. MURRAY:

13 Yes, Your Honor.

14 In connection with the testimony of Dr.
15 Townsend, I want to make sure that certain
16 exhibits are in the record.

17 Exhibit 4241, it's my understanding that
18 was preadmitted with the Teague deposition;
19 but in an abundance of caution, I would
20 reoffer that exhibit.

21 4622, which is similar to 4596 and 4930,
22 the advertisement on the open debate, we
23 would offer into evidence at this time.

24 Exhibit 4238, which I understand was
25 preadmitted in the Rodgman deposition, again,
26 we offer in an abundance of caution.

20 QUESTION: But do you have an opinion of
21 Lorillard's efforts to modify its products
22 over the years?
23

24 ANSWER: I think the efforts that were
25 made were consistent with the data that we
26 had, consistent with the data that other
27 investigators had generated, including the
28 Tobacco Working Group. And I think that our
29 responses in the changes that we incorporated
30 were state-of-the-art and done in a timely
fashion.

31 QUESTION: What is your understanding of
32 the term "denicotinized cigarette"?

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20449

1 ANSWER: A cigarette with essentially
2 zero nicotine. Maybe a better definition
3 would be substantially reduced nicotine in
4 the tobacco.

5 QUESTION: Has Lorillard ever marketed a
6 denicotinized cigarette based on the
7 definition that you just provided?

8 ANSWER: No, we have not.

9 QUESTION: Has Lorillard ever test
10 marketed a denicotinized cigarette based on
11 the definition that you provided?

12 ANSWER: No, Lorillard has not.

13 QUESTION: Have you developed any
14 products using alternative delivery systems
15 for -- on an experimental basis?

16 ANSWER: Yes, we have worked on
17 products. One was a product that had a hole
18 down the center of the product, which kind of
19 burned in a reverse fashion at much higher
20 temperatures than tobacco normally burns,
21 producing a very different cigarette smoke
22 condensate.

23 And we investigated that product. Not
24 only possible ways to fabricate it but, also,
25 a fair amount of detail in smoke composition.
26 That was one research activity. We have
27 had --

28 QUESTION: Let me stop you there for a
29 second.

30 Did that product with the hole down the
31 center have a particular name within
32 Lorillard?

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20450

1 ANSWER: It had a project name, but I
2 don't remember it right now.

3 I was going to say we have, of course,
4 looked at -- we've looked at modifications
5 you might make in reconstituted sheet that
6 would alter the products.

7 I've already discussed generally the
8 fact that we had a project related that --
9 related to reducing nicotine and one reducing
10 nicotine and keeping -- reducing tar and
11 maintaining the level of nicotine. These are
12 some of the alternate designs that we

6 cautioned not to smoke?
7 ANSWER: No.
8 QUESTION: All right. Dr. Spears,
9 you're aware, I take it, that as the
10 population of smokers ages and dies off, that
11 in order for the American cigarette industry
12 to maintain its sales, you've got to get some
13 new smokers into the population; is that
14 right?
15 ANSWER: That seems reasonable, yes.
16 QUESTION: All right. And the only way
17 to get new smokers into the population, that
18 is, the industry as a whole, is to get new
19 people to start; isn't that right?
20 ANSWER: Obviously, if there are people
21 stopping, there must be people starting --
22 QUESTION: All right.
23 ANSWER: -- to maintain a stable
24 business.
25 QUESTION: All right. And are you
26 familiar with statistics showing that most
27 people who start to smoke start to smoke
28 under the age of 18?
29 ANSWER: I have -- I'm aware of those
30 statements. I have not reviewed carefully
31 the statistics, no.
32 QUESTION: If we can, let's mark as the

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20453

1 next exhibit, I believe it will be "Spears
2 4," an August 11th, 1981 memo from a Tom Mau,
3 M-A-U, to a list of individuals.
4 And, Dr. Spears, what I have done to try
5 to save some time is I have a copy of this
6 document in which I have highlighted a
7 statement I want to refer you to. And I've
8 highlighted a copy for you to see, but you're
9 certainly free to read everything in the
10 document. This is just a time-saving device.

11 Dr. Spears, are you familiar with the
12 statistics stating that approximately 3,000
13 teenagers start smoking every day?

14 ANSWER: I have seen the numbers in the
15 press recently, that's all. I haven't --

16 QUESTION: And what do your marketing
17 people tell you about that?

18 ANSWER: Nothing that I can recall.

19 QUESTION: Have you not asked them to --
20 "Is this true or not true?"

21 ANSWER: No.

22 QUESTION: Is that a --

23 ANSWER: I don't believe we've ever made
24 such a study.

25 QUESTION: Has Lorillard ever cut off a
26 retailer or a distributor because Lorillard
27 learned that that retailer or distributor was
28 selling to underaged smokers?

29 ANSWER: Not to my knowledge.

30 QUESTION: All right. Dr. Spears, do
31 you agree that Lorillard, as a company that
32 sells billions of cigarettes a year, that it

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1 has an obligation to thoroughly test its
2 cigarettes to determine that they are safe
3 for consumers? Do you accept that
4 obligation?

5 ANSWER: We have accepted the obligation
6 to continue to evaluate our cigarettes, yes.

7 QUESTION: And as you sit here today,
8 are you satisfied, based on whatever testing
9 Lorillard has done, that Lorillard cigarettes
10 are safe for consumers?

11 ANSWER: Well, "safe" is an absolute
12 term. I don't think I could represent that
13 cigarettes or anything else is absolutely
14 safe. I think that's -- that's not possible.

15 It's not possible to say it with really
16 anything that you ingest or the air you
17 breathe or anything else. So, no, I could
18 not represent to anyone that cigarettes are
19 safe in that context.

20 QUESTION: All right. Can you represent
21 to anyone that Lorillard has done sufficient
22 testing so that you are satisfied, as the
23 head of Lorillard, that Lorillard cigarettes
24 are reasonably safe?

25 ANSWER: I believe that we have done
26 what, in my judgment, is all of the
27 appropriate kinds of tests that we can do
28 which would indicate -- which would indicate
29 to me that we do not know how to make any
30 improvements in the cigarettes beyond what
31 they are.

32 And I do not believe that we are able to
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1 change the risk factor estimate that we have
2 made with respect to the epidemiology.

3 Beyond that, I'm unaware of animal
4 models that could be used for that
5 determination beyond what we have done.

6 So I think we have taken, really, all of
7 the appropriate steps to produce as
8 satisfactory a product as we can produce.

9 QUESTION: All right. Now, you say that
10 you've conducted all the appropriate tests.
11 Has Lorillard sponsored any epidemiological
12 studies to determine whether cigarettes cause
13 disease?

14 ANSWER: Only through The Council for
15 Tobacco Research, yes.

16 QUESTION: All right. Dr. Spears, do
17 you understand that in this country consumers
18 don't have an obligation to test a product
19 that they buy in the mass market to determine
20 if it's safe, that they're entitled to rely
21 on the manufacturer? Do you accept that as a
22 proposition?

23 ANSWER: Well, I think they rely on the
24 manufacturer and they rely on information
25 that's on the package, yes.

26 QUESTION: Okay. Health, smokers

27 couldn't test cigarettes for health, could
28 they, even if they wanted to?
29 ANSWER: Generally, no.
30 QUESTION: Okay. And, Doctor, do you
31 accept as a correct proposition that it's not
32 the government's obligation in this country
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20456

1 to test a private company's products to
2 determine if they're safe or not, that's the
3 manufacturer's obligation? Do you accept
4 that?

5 ANSWER: Generally, yes.

19 believe the public should rely on?
20 ANSWER: I think that they should rely
21 on that statement, yes.
22

ANSWER: I believe that the statement that is being made is accurate based on the scientific information that's available, yes.

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20457

1 ANSWER: If I'm making that statement, I
2 believe they should rely on it, yes.

3 QUESTION: All right. Okay. Now, when
4 the tobacco industry states that there is
5 still a controversy concerning the
6 interpretation of the data, is that a
7 statement the public should be allowed to
8 rely on?

15 influence whether they do or do not smoke.
16 QUESTION: Okay. But I'm asking you,
17 Lorillard, Lorillard wants people to smoke;
18 I'm asking

20 obviously, Lorillard wouldn't be in this
21 business.

22 QUESTION: All right. So Lorillard
23 wants people to smoke so it can have a
24 market. That's fair; isn't it?

25 ANSWER: It's somewhat fair. It's not
26 quite what I would say. I think Lorillard is
27 not trying to cause people to smoke. That's
28 not part of our strategy, never has been.
29 But if they choose to smoke, then we would
30 like them to choose Lorillard brands.

31 QUESTION: All right. Dr. Spears, when
32 you came to Lorillard in 1959, was Lorillard

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20458

1 already studying the issue of tobacco smoke
2 and health effects?

3 ANSWER: They were beginning some --
4 Well, they had done analytical work and they
5 were doing some fractionation of cigarette
6 smoke particulate. And they were, I guess,
7 providing some materials to some of the
8 investigators who were doing skin painting.

9 QUESTION: Okay. And for each of those
10 37 years, has Lorillard either done research
11 or sponsored research somewhere concerning
12 tobacco and health?

13 ANSWER: Each of the 35 years? It
14 depends on how you define smoking and health,
15 but I would say "Yes."

16 QUESTION: All right. And after those
17 37 years of sponsoring research, to the
18 extent Lorillard has done, as we sit here
19 today, it is your testimony that we still do
20 not know that cigarette smoking causes lung
21 cancer; is that right?

22 ANSWER: That's my conclusion. We
23 certainly know a lot more today than we knew
24 35 or 37 years ago.

25 QUESTION: All right. But we don't have
26 the proof, in your view?

27 ANSWER: We do not.

28 QUESTION: Has Lorillard ever taken a
29 cigarette off the market because of health
30 concerns?

31 ANSWER: No.

32 QUESTION: Do you have any plans to do
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20459

1 so?

2 ANSWER: Not today, no.

3 QUESTION: All right. Dr. Spears,
4 what's the value of mouse skin-painting
5 studies in proving the carcinogenicity of a
6 substance?

7 ANSWER: What is the value of it?

8 QUESTION: Yeah.

9 Why are they being -- Why were they done
10 in the past and why are they sometimes still
11 done?

12 ANSWER: Well, number one, it's the only

13 test that I am aware of that produces a tumor
14 as a result of applying cigarette smoke.
15 It's been used, I think, for that reason. It
16 really is the only test.

17 Everyone who uses it, maybe except a few
18 very devoted skin painters, have expressed
19 the desire to find some alternative procedure
20 that would be more representative of a tumor
21 or lung tumors.

22 I don't think anybody's happy with it
23 beyond the fact that you can show something
24 has some potential to be tumorogenic.

25 QUESTION: All right.

26 ANSWER: How much of a potential that's
27 demonstrating on the proximate carcinogen of
28 the nitrosamines has no validity if you're
29 trying to test nitrosamines.

30 QUESTION: Are nitrosamines an
31 organ-specific carcinogen?

32 ANSWER: They can be.

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20460

1 QUESTION: Is one of the organs for
2 which they're specific the lung?

3 ANSWER: That's correct. In certain
4 animals.

5 QUESTION: All right. So you wouldn't
6 expect applying the nitrosamine to mouse skin
7 to get the same reaction that you would in
8 the lung; would you?

9 ANSWER: No. But I'm saying you don't
10 get a response on the mouse skin.

11 QUESTION: And there's a reason for
12 that; isn't there?

13 ANSWER: Well, that's why the skin is
14 not appropriate. Yes, there's a reason.

15 QUESTION: So on mouse skin, you
16 wouldn't get a reaction but it can cause
17 cancer in the lung?

18 ANSWER: Not if you apply it to the
19 skin.

20 QUESTION: Well, obviously not.

21 ANSWER: But if you put it in the --

22 QUESTION: The same substance --

23 MR. LONG: Let the doctor finish.

24 ANSWER: But if you put it in the
25 drinking water, you can get the lung tumor;
26 but you can't get it by applying it to the
27 skin. So in that particular instance, the
28 skin is the wrong model.

29 And the skin is a very, very limited
30 model that I think a lot of people think has
31 little to no validity for determination of
32 carcinogenesis.

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20461

1 QUESTION: Do you agree with that?

2 ANSWER: I agree that it can do no more
3 than demonstrate that there is some potential
4 here for carcinogenesis.

5 QUESTION: Has Lorillard supported or

6 sponsored mouse skin-painting experiments in
7 the past?
8 ANSWER: Yes, we have.
9 QUESTION: Do you still do that?
10 ANSWER: Yes, we do.
11 QUESTION: And if it has little or no
12 value, why do you do it?
13 ANSWER: As I said, it is the only model
14 that you can produce a result of tumor -- of
15 a tumor using smoke, cigarette smoke.
16 QUESTION: Well, let's say you get no
17 reaction on the mouse skin. Does that mean
18 you're not going to get a reaction in the
19 lung?
20 ANSWER: No.
21 QUESTION: All right. Let's say you get
22 a reaction on the mouse skin. Does that mean
23 you'll get the same reaction in the lung?
24 ANSWER: What I think -- You can make
25 comparative studies on the mouse skin. And
26 if you got a different result from two
27 substances, then that simply says, hey, this
28 might be worth some additional testing in
29 another system.
30 But it certainly -- I wouldn't use it as
31 any conclusive experiment. The National
32 Cancer Institute, I believe, reached the same

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20462

1 conclusion.
2 Some of the other problems with mouse
3 skin -- if you want to get into the detail of
4 it -- is that you have a very, very limited
5 dose range in which you can get a response.
6 And frequently if you apply a higher dose,
7 you get a lesser response.
8 So if you do a couple of different dose
9 levels, you get no response, then you get a
10 response, and you go higher and the response
11 goes down again. So you can only function in
12 a narrow range.
13 QUESTION: What type of mouse skin-
14 painting experiments is Lorillard sponsoring
15 now?
16 ANSWER: We have a program that relates
17 to any additives that we put on cigarettes.
18 And that we test these additives in the
19 presence of tobacco and on -- and we test the
20 tobacco smoke that results from cigarettes
21 with the additives.
22 And part of the screening is to whether
23 or not we find these additives useful and
24 willing to use on cigarettes is -- one of
25 the pieces of that is the skin-painting
26 experiment.
27 QUESTION: All right. And when did
28 Lorillard begin the skin-painting test for
29 additives?
30 ANSWER: Probably about late seventies,
31 early eighties.
32 QUESTION: All right. And, Dr. Spears,

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1 I'd like to ask you can you tell me is there
2 any number of cigarettes smoked by a person
3 that you would agree would cause disease?
4 Any number of cigarettes?

5 ANSWER: Any number of cigarettes?
6 That's a difficult question. I think you
7 could probably kill yourself if you smoked 24
8 hours a day, one cigarette after the other.

9 QUESTION: And how would you kill
10 yourself doing that?

11 ANSWER: You'd probably asphyxiate
12 yourself.

13 QUESTION: From the carbon monoxide in
14 cigarettes?

15 ANSWER: And/or nicotine, yes.

16 QUESTION: Okay. Other than that, other
17 than 24 hours a day, is there any dose of
18 cigarettes, number of cigarettes smoked per
19 day, that you would agree would cause
20 disease?

21 ANSWER: No.

22 QUESTION: Dr. Spears, until quite
23 recently, the American tobacco industry was
24 united in denying that cigarette smoke caused
25 disease; is that true? All the companies
26 were agreed upon that?

27 ANSWER: I don't think there's any
28 agreement among the companies on that
29 statement. Each company is making their
30 individual statements.

31 QUESTION: All right. Are you aware of
32 any American tobacco company that, as of two

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1 years ago, was stating "We agree that
2 cigarette smoke causes lung cancer"?

3 ANSWER: No, I won't -- I'm not.

4 QUESTION: Dr. Spears, is it your
5 testimony from your experience at Lorillard
6 and in the tobacco industry generally that
7 the tobacco industry has performed adequate
8 tests of cigarettes, their ingredients and
9 their additives?

10 ANSWER: I don't -- I can't speak for
11 the industry. For Lorillard, I believe we
12 have, yes.

13 QUESTION: All right. And is it your
14 testimony, sir, from your experience at
15 Lorillard and in the industry that Lorillard
16 has performed adequate testing of the
17 ingredients of the flavor compounds that
18 Lorillard has purchased from flavor houses?

19 ANSWER: Yes, that is my position.

20 QUESTION: All right. And is it your
21 position, sir, that Lorillard has performed
22 timely testing of cigarettes, their additives
23 and their ingredients?

24 ANSWER: I think so, yes.

25 QUESTION: Let me restate it this way.
26 Is it your testimony, sir, from your

27 experience at Lorillard and in the industry
28 that Lorillard has performed timely testing
29 of the additives which have gone into
30 Lorillard cigarettes?

31 ANSWER: That -- By "additives," do you
32 mean things that Lorillard has added?

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20465

1 QUESTION: Yes.

2 ANSWER: Yes, I believe so.

3 QUESTION: All right. Dr. Spears, did
4 you ever become aware of any instance during
5 your career at Lorillard and in the industry
6 of any time when any tobacco company official
7 or group of tobacco company officials took
8 any steps to prevent adequate testing of
9 cigarettes, their ingredients or their
10 additives?

11 ANSWER: Took steps to prevent?

12 QUESTION: Yes.

13 ANSWER: No.

14 QUESTION: Let me mark as next a
15 February 21st, 1967 letter from Dr. Spears to
16 a Mr. Bennett.

17 Dr. Spears, are you familiar with the
18 experiments discussed in this letter?

19 ANSWER: Yes, I am.

20 QUESTION: It looks as if you had sent
21 some cigarettes out to two doctors and had
22 them test the effect of the cigarettes on cat
23 cilia; is that basically right?

24 ANSWER: That's correct.

25 QUESTION: All right. And quoting from
26 the first page, quote, "The results which he
27 has obtained to date indicate that Lark
28 cigarette smoke is about twice as toxic as
29 smoke from True cigarettes," unquote.

30 Did I read that correctly?

31 ANSWER: You did.

32 QUESTION: All right. Was Lark a

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20466

1 Lorillard brand?

2 ANSWER: No, it wasn't.

3 QUESTION: All right. And was True a
4 Lorillard brand?

5 ANSWER: Yes, it was.

6 QUESTION: All right. Why are we
7 concerned, Doctor, about whether cigarette
8 smoke has an effect on the cilia or not? Why
9 should we care?

10 ANSWER: Well, as I recall this, this
11 was in and around the time that Lark
12 cigarettes came on the market and received
13 some positive comments with respect to them
14 in the Surgeon General's report, the first
15 Surgeon General's report, with respect to
16 ciliotoxicity in that Lark cigarettes
17 contained the carbon filter.

18 That work was done by other
19 investigators. And this was an effort to see

20 whether or not the systems that we were using
21 to look at ciliary activity would respond in
22 a way that would confirm those -- confirm the
23 results of those who had done testing on Lark
24 cigarettes. So I think that's why these two
25 samples were picked for the evaluation.

26 And, of course, the results did not
27 confirm what the investigators that studied
28 the Lark cigarette had indicated and it
29 published.

30 I think where all of this ended up was
31 that the results you get depend on how you
32 conduct these tests. They're really not

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20467

1 representative of the human situation. And
2 the method of exposure is very important as
3 to how you weight the significance of the
4 different components of cigarette smoke and
5 that sort of thing.

6 I think the bottom line is that most of
7 the components that are toxic to cilia at the
8 concentration of cigarette smoke are very
9 water soluble and are absorbed in the oral
10 cavity. And very few, if any, go into the
11 lower respiratory tract and affect the cilia.

12 QUESTION: Do you recall your company
13 ever looking into whether manipulating
14 nicotine by enriching nicotine in a cigarette
15 could bring you under FDA jurisdiction?

16 ANSWER: Did we ever consider that
17 possibility?

18 QUESTION: Yes.

19 ANSWER: Yes, we considered that
20 possibility.

21 QUESTION: All right. When Lorillard
22 was working on its Nicotine Augmentation
23 Project, I understand your testimony is it
24 never got out of -- never got into commercial
25 production, but while you were working on the
26 project, what were the steps that Lorillard
27 took to augment the nicotine in the
28 cigarettes that were being developed?

29 ANSWER: Well, I'm not sure I can recall
30 all those steps. But, as I recall, Lorillard
31 investigated the transfer of nicotine from
32 tobacco to the smoke and what might influence

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20468

1 that transfer. And this was some of the
2 normal construction variables, including the
3 paper, cigarette paper.

4 We investigated whether or not if you
5 put -- moved the nicotine to the outer
6 periphery of the cigarette as to whether you
7 would get greater transfer, we looked at
8 adding nicotine in various forms to the
9 tobacco. Those are the things that I recall
10 at the moment.

11 QUESTION: Dr. Spears, --

12 ANSWER: We looked at treating filters

13 to make them less effective for nicotine;
14 whereas, they would remain effective for the
15 tar.

16 QUESTION: And as I understand your
17 testimony, Dr. Spears, the reason Lorillard
18 did not market the nicotine-enhanced
19 cigarette was because of a taste problem with
20 it?

21 ANSWER: We -- I think the observation
22 was that if you took a three milligram tar
23 cigarette and increased the nicotine, that
24 it was an irritating, unacceptable cigarette
25 smoke. Therefore, we gave up the idea of
26 trying to augment these low-tar cigarettes
27 with nicotine as a procedure for potentially
28 making them more acceptable.

29 QUESTION: And so was it then the taste
30 problem that was the reason why Lorillard did
31 not market the nicotine-enhanced cigarette?

32 ANSWER: Taste? Well, I mean, that --
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20469

1 that was a technical factor that eliminated
2 the project from further consideration.

3 QUESTION: That was the reason that
4 killed the project?

5 ANSWER: Yeah. We could not accomplish
6 the end result, which was an acceptable
7 product. So it never got to the
8 consideration as to whether we would actually
9 market the product.

10 QUESTION: Dr. Spears, as you sit here
11 today, are you aware of any
12 misrepresentations, false statements or
13 concealment of material facts by Lorillard,
14 or anyone acting on Lorillard's behalf,
15 regarding issues of smoking and health?

16 ANSWER: I'm not aware of any, no.

17 QUESTION: All right. Are you aware of
18 any joint efforts by Lorillard and any other
19 tobacco company to misrepresent or conceal
20 material facts regarding smoking and health
21 matters?

22 ANSWER: No, I'm not.

23 QUESTION: Well, let's look at an August
24 17th, 1960 letter from A. W. Spears to a John
25 Howell, which we'll mark as Spears next.

26 Dr. Spears, does this letter reflect
27 that you had sent an abstract of a paper to
28 be presented at a tobacco chemists'
29 conference?

30 ANSWER: It does.

31 QUESTION: And does it reflect that you
32 then wrote to a Professor Howell, quote, "It

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20470

1 has been recently decided in the interest of
2 the company and the tobacco industry that a
3 paper dealing with compounds which are
4 controversial in the health aspects of
5 smoking should not be presented. It is,

6 therefore, requested that the committee does
7 not consider the paper for presentation at
8 the conference," unquote.
9

10 Did you write that?
11

12 ANSWER: I, quite frankly, don't
13 remember it. The paper was published.
14

15 QUESTION: That's a letter that you
16 wrote?
17

18 ANSWER: That's a letter that I wrote.
19 I'm also pointing out to you that this was
20 published and is part of my curriculum vitae.
21

22 QUESTION: Why did you write this
23 letter?
24

25 ANSWER: I don't remember.
26

27 QUESTION: Who told you to write it?
28

29 ANSWER: I don't remember that, either.
30

31 QUESTION: Were you offended that
32 someone within the company asked you to pull
33 a scientific paper that you'd prepared
34 because it could be detrimental to Lorillard?
35

36 ANSWER: I don't remember anyone saying
37 that. This, of course, was when I was with
38 the company for a very short period of time.
39

40 QUESTION: You certainly were not in the
41 position to buck a superior who told you to
42 pull a paper; were you?
43

44 ANSWER: I would not have been at that
45

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49 20471

50 time.
51

52 QUESTION: All right. And the paper
53 concerned phenol; didn't it?
54

55 ANSWER: That's correct.
56

57 QUESTION: And phenol is a substance
58 that's alleged to be harmful in tobacco
59 smoke; isn't it?
60

61 ANSWER: It was at one time.
62

63 QUESTION: Okay. And is phenol a
64 substance that Lorillard tried to selectively
65 filter out of cigarettes because of its
66 alleged harm?
67

68 ANSWER: We did. And we published all
69 of this work.
70

71 QUESTION: You don't remember who it was
72 who told you as a young research chemist to
73 pull your paper?
74

75 ANSWER: I do not.
76

77 QUESTION: Okay. Let's mark that as
78 next, March 31st, 1980 from Robert Seligman
79 to Alex Spears.
80

81 Dr. Spears, you've seen this letter
82 before recently; haven't you?
83

84 ANSWER: I've seen it before. I don't
85 know how recently.
86

87 QUESTION: All right. And was Dr.
88 Seligman your counterpart at Philip Morris?
89

90 ANSWER: I believe at the time he was --
91 Well, it says Vice-President for Research &
92 Development. And at the time, I would have
93 been, I guess, maybe an Executive
94 Vice-President.
95

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97

1 QUESTION: Okay. So we have basically
2 two of the top research men in two of the
3 American tobacco companies talking to each
4 other about research projects?

5 ANSWER: Well, I had more
6 responsibilities than just research at this
7 time.

8 QUESTION: Okay. All right. And Dr.
9 Seligman was writing you with topics that he
10 thought on behalf of Philip Morris the
11 tobacco industry should explore and then,
12 also, topics that should be avoided; correct?

13 ANSWER: Yes. I believe he wrote this
14 in expressing his views with respect to a
15 committee that I was on.

16 QUESTION: All right. And the subjects
17 to be avoided, which are listed on the last
18 page, include, quote, "Attempt to relate
19 human disease to smoking," unquote.

20 Did I read that correctly?

21 ANSWER: Yes.

22 QUESTION: All right. Now, Dr. Spears,
23 if the tobacco industry avoids studies that
24 attempt to relate human disease to smoking,
25 if it avoids doing those, how do you ever
26 expect to be able to prove, in your mind,
27 whether smoking causes human disease or not?

28 ANSWER: Well, I don't know what he
29 meant by this. But I can certainly read it
30 to indicate that he meant to not conduct
31 epidemiological studies.

32 QUESTION: All right. He says, under
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1 "Subjects to be Avoided," quote, "Attempt to
2 relate human disease to smoking." That that
3 should be avoided; right?

4 ANSWER: Well, that's what I'm saying.
5 A statistical relationship between disease
6 and human smoking.

7 QUESTION: All right. He doesn't say,
8 "statistical relationship." He says,
9 "Attempt to relate human disease to smoking,"
10 that should be avoided?

11 ANSWER: I realize what it says. I'm
12 simply saying I can interpret that to mean
13 don't do epidemiological studies.

14 QUESTION: All right. Did you call up
15 Dr. Seligman when you got this letter and
16 say, "Bob, what do you mean by this?"

17 ANSWER: I probably did ask him what he
18 meant by these things, but I don't recall.

19 QUESTION: Okay. All right. You'll
20 agree with me, Doctor, that if you don't look
21 in an area for answers, you're never going to
22 find the answer; are you?

23 ANSWER: Well, if you -- if you believe
24 that there's nothing more to be learned from
25 epidemiological studies, then it would be
26 reasonable to state don't do any more of

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1 of what was meant.

2 QUESTION: Another subject that Dr.
3 Seligman says the tobacco industry should
4 avoid is "Developing new tests for
5 carcinogenicity."

6 Didn't you tell me earlier today that
7 the mouse skin was not a satisfactory test
8 for carcinogenicity?

9 ANSWER: I did.

10 QUESTION: Well, why wouldn't the
11 industry want to develop a new test for
12 carcinogenicity? Isn't that exactly what you
13 said everyone was looking for?

14 ANSWER: Well, I don't know what his
15 view then was. But maybe he felt that there
16 was no relevant test that you could develop.

17 QUESTION: Well, how would you know if
18 you didn't look?

19 ANSWER: Well, what would you look for?
20 I mean, we were doing inhalation studies.
21 But if he's referring to things like tissue
22 culture tests, which CTR had done in the
23 past, as something that we should not invest
24 money in, I think you would be totally
25 correct in making that statement that this is
26 another test that's very far removed from the
27 human and probably has little value if you
28 spend money there. It's a question of what
29 are your priorities.

30 QUESTION: And Dr. Seligman was stating
31 that the industry should avoid completely
32 trying to develop any new test for

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20 very little likelihood of developing some new
21 relevant tests for carcinogenicity.

22 That, at this time, I would say a better
23 investment in money would be to try to better
24 understand the mechanism of this disease.
25 And when that's the case, then you can define
26 more relevant tests.

27 QUESTION: Since 1980, has Lorillard
28 spent any money to try to develop a new test
29 for carcinogenicity?

30 ANSWER: Lorillard has spent money in
31 developing mutagenic assays in that field,
32 yes, we have.

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20476

1 QUESTION: Did you ever write Dr.
2 Seligman back and give him your views on his
3 proposed subjects that should be looked at
4 and those that should be avoided?

5 ANSWER: As I recall, these were
6 submitted to me as a member of a committee
7 that was kind of asking the question as to
8 whether the industry as a group was
9 supporting the right kind of research in
10 total, whether we should be perhaps changing
11 research priorities, whether we should be
12 perhaps thinking of new initiatives. And
13 these were simply his suggestions that came
14 into that committee.

15 Excuse me.

16 QUESTION: Is your recollection that you
17 didn't write him back with any comments?

18 ANSWER: I don't have a recollection on
19 that, but I doubt it.

20 QUESTION: Okay. Can you tell me, Dr.
21 Spears, what outside research on smoking and
22 health Lorillard directly sponsored, putting
23 aside the CTR, Lorillard directly sponsored
24 with outside researchers at universities or
25 institutions?

26 ANSWER: That Lorillard directly
27 sponsored?

28 Lorillard directly sponsored all of the
29 work with Drs. Dalhamn and Rylander for a
30 period of time that probably goes from the
31 mid sixties up somewhere in the late
32 seventies.

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20477

1 QUESTION: Okay. Anyone else?

2 ANSWER: We have sponsored work at a
3 large variety, a number of consulting
4 laboratories with respect to various -- this
5 ingredients testing program that I mentioned.

6 QUESTION: All right. Anywhere else?

7 ANSWER: We have sponsored work at Vitel
8 Institute in Columbus.

9 QUESTION: What was the subject of that
10 work?

11 ANSWER: Different subjects over time.
12 Are you okay? The --

29 There was an earlier period when they
30 did a lot of work that Lorillard directly
31 supported on particle size of tobacco smoke.
32 They were some of the very early results in

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1 looking at the size of the particles through

2 the aerosol and tobacco smoke.
3 Lorillard supported a period of research
4 on filter materials and what they might be
5 used to -- how they might be used to
6 selectively remove components from tobacco
7 smoke.

8 We also supported Vitel at some point in
9 trying to develop a fiberoptic method of
10 being able to look at ciliary activity in
11 large intact animals. Those are the things
12 that I remember at Vitel.

12 that I remember at Viteri.
13 QUESTION: Okay. Anywhere else that
14 Lorillard has directly sponsored any research
15 on tobacco health matters?

20 blood assays.
21 QUESTION: Any of these inhalation tests
22 done at universities as opposed to private
23 laboratories?

QUESTION: Okay. Are there any other institutions where Lorillard has supported research work on tobacco and health?

ANSWER: There may be others, but --
I think there was work at the University of
Ohio before I came with Lorillard on the
composition of smoke.

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20479

1 QUESTION: I saw some mention somewhere
2 of a study or studies done at Harvard. Did
3 you support any studies at Harvard?

ANSWER: Well, I thought you were asking me if Lorillard separately and independently

6 supported these.

7 QUESTION: Directly supported. Not
8 necessarily only but directly supported.

9 ANSWER: Oh, yes, of course. We -- I
10 interpreted what you said to be only
11 Lorillard.

12 QUESTION: I'm sorry.

13 ANSWER: And what I mentioned so far has
14 been only Lorillard.

15 QUESTION: Okay. Well, let's go to
16 directly but not necessarily only.

17 ANSWER: Well, Lorillard has provided
18 support to Harvard for a program there that
19 was basically an inhalation program in
20 animals.

21 QUESTION: All right. Now, who else
22 participated with Lorillard in funding that
23 program?

24 ANSWER: I can't be a hundred percent
25 sure, but I believe all the major tobacco
26 companies did.

27 QUESTION: Okay. And what was that
28 program?

29 ANSWER: Well, that was, as I said, an
30 inhalation program that was aimed at
31 developing the methods and assessing whether
32 or not there was effect on the animals

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20480

1 through smoke inhalation.

2 QUESTION: Do you recall whether the
3 Harvard work used a reference cigarette or
4 commercial cigarettes?

5 ANSWER: I would think it used
6 reference, but I don't recall that detail.

7 QUESTION: Did the -- Did this Harvard
8 work produce any satisfactory scientific
9 results, as far as you're concerned?

10 ANSWER: Well, it produced some
11 publications. But, certainly, it, in my
12 judgment, it made no major contribution to
13 the subject. I think, you know, beyond the
14 fact that I think the results were
15 essentially negative.

16 (Whereupon the playback of the above-
17 referenced videotape is concluded at this
18 time.)

19 MR. COPLEY:

20 Your Honor, that concludes the
21 deposition.

22 THE COURT:

23 All right. Well, we'll recess for the
24 day, ladies and gentlemen. Report Monday
25 morning at 9:30. Tomorrow is a day off.
26 See you then. Tomorrow you're off. Report
27 Monday morning at 9:30, okay? Have a nice
28 weekend.

29 THE JURY:

30 You, too.

31 (Whereupon the jury is excused at this
32 time.)

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20481

1 THE COURT:
2 Let the record reflect the jury has left
3 the courtroom.
4 Anything for the record by plaintiffs'
5 counsel?
6 MR. MURRAY:
7 No, Your Honor.
8 THE COURT:
9 Defense counsel?
10 MR. WITTMANN:
11 No, Your Honor.
12 THE COURT:
13 All right. Please remember to clean up
14 the courtroom. I expect Judge Belsome has
15 motions tomorrow and he'll be using the
16 courtroom, I expect.
17 We'll recess until 9:30 on Monday
18 morning.
19 MR. SCHNEIDER:
20 Can I ask Your Honor a question? I
21 think I can send over our 48-hour materials,
22 demonstratives and exhibits, either later on
23 today or first thing tomorrow morning.
24 Does it help you to have that tomorrow
25 for Dr. Blackie on --
26 THE SPECIAL MASTER:
27 It helps me.
28 MR. SCHNEIDER:
29 So should I send it over to your office?
30 THE COURT:
31 Room 401 in this building. Room 401 is
32 where you should send them.

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20482

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20483

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